

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>Application No.:</b>	10/082,935	<b>Conf. No.:</b>	4069
<b>Applicant:</b>	Hoi <i>et al.</i>	<b>TC/AU:</b>	3621
<b>Filed:</b>	10/22/2001	<b>Examiner:</b>	Augustin, Evens J.
		<b>Docket:</b>	AT000062

**Title:** METHOD OF AUTOMATIC PAYMENT  
OF A SOFTWARE LICENSE FEE

Mail Stop Appeal Brief – Patents  
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### BRIEF OF APPELLANTS

This is an appeal from the Final Office Action dated December 15, 2006, rejecting claims 1-13, and an Advisory Action dated March 9, 2007, reaffirming the rejection of the same claims. This Brief is accompanied by the requisite fee set forth in 37 C.F.R. 1.17 (c).

### REAL PARTY IN INTEREST

Koninklijke Philips Electronics N.V., a corporation of the Netherlands is the real party in interest.

### RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

### STATUS OF CLAIMS

As filed, this case included claims 1-15. Claims 14 and 15 have been cancelled. Claims

1-13 remain pending, stand rejected, and form the basis of this appeal.

### **STATUS OF AMENDMENTS**

A Final Office Action was issued by the Office, dated December 15, 2006, in response to an Amendment that was filed on September 28, 2006 by Appellants. An After Final Request for Reconsideration was filed on January 29, 2007 in response to the Final Office Action. Pursuant to an Advisory Action, dated March 9, 2007, said After Final Request for Reconsideration was considered and reconfirmed the rejection of the arguments made therein.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention provides a method of automatic payment of a software license fee (see in general, FIG. 2); a transcription service arrangement for offering a transcription service and for determining software licensing payment information (see in general FIG. 2); and, a pay system for automatic payment of a software license fee for a service program run by a service arrangement (see in general, FIG. 1; and, item 18 in FIG. 1). The method allows for keeping the initial cost of software license fees of a service program for an operator relatively low and for paying the manufacturer of the service program in line with the actual use of the service program.

Claim 1 claims a method (See e.g., FIG. 2, items 7) of automatic payment of a software license fee to a licensor for a service program which is run and licensed to a service arrangement, comprising: receiving input information, including a dictation by a user (see e.g., ¶¶[0036][0040]), from a user device (see e.g., items 2, 3 in FIG. 1) of the user of a service offered by the service arrangement; processing the received input information (see e.g., step 22

in FIG. 2; ¶¶[0038][0041]) with the service program and rendering output information available, wherein the processing comprises determining one of a number of words in the dictation (see e.g., word information WI in ¶[0046]; FIG. 1) and a number of edition operations during a transcription of the dictation (see e.g., editing information EI in ¶[0048]; FIG. 1); sending (see e.g., ¶[0039] the available output information to the user device (items 2, 3); determining software license settlement information from the output information (see e.g., SAI(BK) in ¶[0049]; and sending the determined software license payment information (see e.g., LAI in ¶[0054] to a pay system (item 18 in FIG. 1) for automatic payment (see in general, ¶¶[0061]-[0069]; item 7 in FIG. 2) of the software license fee for the service program to the licensor, which pay system (item 18 in FIG. 1) provides a bill for the software license fee for the use of the service program by an operator of the service arrangement based on the sent software license payment information (see e.g., LAI in FIG. 1).

### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 1-13 are unpatentable under 35 U.S.C. 103(a) over Cilurzo et al. (U.S. 6,434,526), hereinafter “Cilurzo”, in view of Mischelevich et al. (U.S. 6,434,547), hereinafter “Mischelevich”.
2. Whether claims 1-13 are unpatentable under 35 U.S.C. 103(a) over Cilurzo in view of Mischelevich and in further view of Frison et al. (U.S. 6,049,789), hereinafter “Frison”.

## ARGUMENT

### 1. REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. §103(a) OVER CILURZO IN VIEW OF MISHELEVICH

Appellants respectfully submit that the rejection of claims 1-13 under 35 U.S.C. 103(a) over Cilurzo in view of Mishelevich is defective.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Appellants respectfully submit that the Cilurzo and Mishelevich references, taken alone or in combination, at the least, fail to meet the third criterion to establish a *prima facie* case of obviousness. That is as discussed herein, Cilurzo does not teach or suggest all the claim limitations; and, Mishelevich does not remedy the deficiencies of Cilurzo. As such, the rejection under 35 U.S.C. §103(a) is defective.

With respect to claim 1, Cilurzo and Mishelevich do not teach or suggest, *inter alia*, processing the received input information and rendering output information available wherein the processing comprises *determining one of a number of words in the dictation and a number of edition operations during a transcription of the dictation* along with *determining software license settlement information from the output information*. (emphasis added)(See claim 1, as similarly recited in claims 6 and 10.)

Appellants respectfully contend that the Office is making unsupported allegations in regards to the cited art (i.e., Cilurzo, Mishelevich, and/or Frison) as it relates to the cited limitations (above).

Interpreting Cilurzo and Mishelevich only for the purposes of this Appeal, Appellants submit that Cilurzo merely discloses speech recognition software in combination with application specific software on a communications network. Abstract. There is simply no teaching, or suggestion, in Cilurzo of any type of determination of number or words and/or number of edition operations during a transcription process that ties to a payment of a software license fee. In fact, the Office admits this deficiency in Cilurzo. “Cilurzo et al. did not teach a system which determines the number of words being transcribed or the number of correction made.” (sic) Final Office Action, page 5, item 4.

Yet, the Office also alleges that Cilurzo discloses “[d]etermining a number of words in dictation (column 4, lines 42-48).” Final Office Action, page 5, item 4. Regardless of this apparent contradictory position, Appellants have reviewed the cited section in Cilurzo, and Cilurzo in its entirety, and submit that the limitation is not taught or suggested. The cited section (i.e., column 4, lines 42-48) states:

“Once speech data has been received by the speech engine 304, the speech recognition algorithm will apply a trigram statistical model, which will determine the proper context of three words appearing in sequence and then after selecting the possible words, perform a further detailed analysis of the remaining likely candidates be above to be accommodated at any given time.”

Appellants respectfully submit that this cited section is completely devoid of *any* type of a suggestion of the aforementioned determining limitation that employs word count or quantity of edition operations during transcription, as in the claimed invention.

The Office also turns to Mishelevich, specifically citing column 3, lines 1-3 and 30-67 of Mishelevich, for disclosure of the admittedly missing limitation in Cilurzo. The Office, in referring to Mishelevich, alleges at the end item 4 on page 5 of the Final Office Action:

“According to Mishelevich et al., data being entered is quantified as points (column 3,

lines 1-3, 30-67). Therefore, it would have been obvious for one skilled to provide voice-to-text software/service that includes word count because, according to Mishelevich et al., such feature would facilitate the billing service of the system (column 3, lines 9-10).”

Even assuming *arguendo* that the first sentence from the above quotation is accurate, the second conclusory sentence in the quotation made by the Office (above) is completely without merit. There is nothing in Mishelevich, either explicit or implicit, that shows a teaching of determining number of words in a dictation and/or number of edition operations during a transcription of the dictation. Word count and/or counting edits during transcription is not considered in Mishelevich because the point system of Mishelevich is merely used to quantify/qualify the work associated with obtaining information, typically in a doctor/patient environment, and is wholly unrelated to transcription services. As explained in the paragraphs found at column 11, lines 23-67, and column 12, line 1-37, the point system of Mishelevich is related to how well a doctor, typically, examines/obtains information from a patient and how appropriately and efficiently this information is dictated. “Points are allocated to the entered data to facilitate subsequent decision making.” Abstract. “The points or other quantitative measure of the data input may serve to measure the qualitative and quantitative value of tasks performed by a user. For instance, a **physician** examining a patient, may be given points based on extensiveness of the patient evaluation and the complexity of the diagnosis. **He** may also be given points based on the severity of the patient’s illness or the amount of expertise required of the physician.” (emphasis added) Col. 3, lines 11-18. “[A]ssociated with one or more points depending on the quantity of quality of **the work associated with obtaining such information.**” (emphasis added) Col. 11, lines 25-27. As discussed throughout Mishelevich, the point system is related to the level of quality/quantity of work done (i.e., medical examinations) by doctors.

There is nothing in these sections, or Mishelevich as a whole, to suggest that the edition operations and/or word counting is done, nor is it further suggested to relate this type of quantification to automatic payment of a software license fee whatsoever. So even assuming *arguendo* that it is obvious to combine Mishelevich with Cilurzo, to do so would not teach or suggest the features of the claimed invention.

Accordingly, Appellants submit that there is no disclosure or suggestion in either Cilurzo or Mishelevich of a method that includes steps comprising processing the received input information and rendering output information available wherein the processing comprises determining one of a number of words in the dictation and a number of edition operations during a transcription of the dictation along with determining software license settlement information from the output information, as recited in claim 1. Therefore, Appellants respectfully request withdrawal of the rejection.

**A. Independent Claims 6 and 10**

In the Office Action, independent claims 6 and 10 are rejected under the same rationale as claim 1. As a result, Appellants herein incorporate the arguments submitted above with respect to claim 1. Accordingly, Appellants respectfully request withdrawal of the rejection.

**B. Dependent Claims 2-5, 7-9 and 11-13**

With respect to dependent claims 2-5, 7-9 and 11-13, Appellants herein incorporate the arguments presented above with respect to the independent claims from which the claims depend. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Further, both in the Final Office Action (second full paragraph, item 4, on page 4) and in the Advisory Action (Continuation sheet, page 2) the Office provides its own interpretation of 10/082,935

the claimed invention. In response, Appellants respectfully disagree with the interpretation by the Office made in the referenced paragraphs. Appellants carefully point out that the claimed invention speaks for itself *in the claims*, as written. Further, for example, any statements of interpretation, summaries of what the invention is ‘about’, and/or statements such as the software “happens to be voice/speech recognition software” made by the Office, in general, are not accepted as a substitute for the actual claim language.

## **2. REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. §103(a) OVER CILURZO IN VIEW OF MISHELEVICH AND IN FURTHER VIEW OF FRISON**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Appellants respectfully submit that the Cilurzo, Mishelevich, and Frison references, taken alone or in combination, at the least, fail to meet the third criterion to establish a *prima facie* case of obviousness. As discussed above, Cilurzo and Mishelevich do not teach or suggest all the claim limitations; and, Frison does not remedy the deficiencies of Cilurzo and Mishelevich. As such, the rejection under 35 U.S.C. §103(a) is defective.

## **CONCLUSION**

In summary, Appellants submit that claims 1-13 are allowable because the claimed invention is not anticipated by the cited references, Cilurzo, Mishelevich, and/or Frison. The cited references, taken alone or in combination, fail to meet at least one of the three basic criteria

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required to establish a *prima facie* case of obviousness.

Respectfully submitted,

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## CLAIMS APPENDIX

1. A method of automatic payment of a software license fee to a licensor for a service program which is run and licensed to a service arrangement, comprising:

receiving input information, including a dictation by a user, from a user device of the user of a service offered by the service arrangement;

processing the received input information with the service program and rendering output information available, wherein the processing comprises determining one of a number of words in the dictation and a number of edition operations during a transcription of the dictation;

sending the available output information to the user device;

determining software license settlement information from the output information; and

sending the determined software license payment information to a pay system for automatic payment of the software license fee for the service program to the licensor, which pay system provides a bill for the software license fee for the use of the service program by an operator of the service arrangement based on the sent software license payment information.

2. The method of claim 1, wherein the service arrangement runs a speech recognition program including:

receiving speech information of a dictation of the user as the input information,

processing the speech information,

recognizing text information of the dictation from the received speech information, and

sending the recognized text information as the output information to the user device of the user of the service arrangement.

3. The method of claim 1, wherein an identification number of the service program is entered in the software license payment information during an installation of the software of the service program and is stored by the service arrangement.
4. The method of claim 1, wherein the software license payment information is stored in encoded form by the service arrangement.
5. The method of claim 1, wherein the service arrangement executes at least two service programs in parallel and in which the service arrangement takes these at least two service programs into account when the software license payment information is determined.
6. A transcription service arrangement for offering a transcription service and for determining software license payment information, to enable an automatic payment of a software license fee for a speech recognition program run by the transcription service arrangement to a licensor, comprising:
  - receiving means for receiving speech information of a dictation from a user device of a user of the transcription service,
  - speech recognition means which, when the speech recognition program is run, are arranged for processing the received speech information and for providing text information which is recognized from the received speech information,
  - service payment means for determining service payment information for the transcription of the user's speech information, wherein the determining further comprises determining one of a

number of words in the dictation and a number of edition operations during the transcription of the dictation,

service send means for sending the recognized text information,

software license payment means for determining the software license payment information from the determined service payment information based on the recognized text information, and

software license send means for sending the determined software license payment information to a pay system which is provided for preparing a bill for the software license fee on the basis of the received software license payment information for the use of the speech recognition program by the operator of the transcription service arrangement.

7. The transcription service arrangement of claim 6, wherein the software license payment means are arranged for detecting a manipulation of the determined service payment information and for detecting a manipulation of the determined software license payment information.

8. The transcription service arrangement of claim 6, wherein the software license payment means are arranged for requesting a new prepaid balance from the pay system when the prepaid balance stored in the pay system has reached a predetermined value.

9. The transcription service arrangement of claim 6, wherein the software license send means are provided for periodically sending the determined software license payment information to the pay system even when the speech recognition program was not run in the payment interval by the transcription service arrangement.

10. A pay system for automatic payment of a software license fee for a service program run by a service arrangement, comprising receiving means for receiving software license payment information from the service arrangement, which runs the service program so that input information is processed by a user device, wherein the processing includes determining one of a number of words in a dictation and a number of edition operations during a transcription of the dictation, and output information is delivered to the user device, and comprising software license billing means for processing the received software license payment information and for preparing a bill for the software license fee for the use of the service program by the operator of the service arrangement based on the output information.

11. The pay system for automatic payment of claim 10, wherein the software license billing means are provided for deducting the amount of the available bill from a prepaid balance of the operator of the service arrangement.

12. A computer program product which can be directly loaded into the internal memory of a digital computer and comprises software code sections, in which the computer executes the steps of the method as claimed in claim 1.

13. The computer program product of claim 12, wherein it is stored on a medium that can be read by the digital computer.

## **EVIDENCE APPENDIX**

No evidence has been submitted.

## **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.